XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CRA.No..444 **सन्** 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT: Amrit Lohar, son of Chetram Lohar, aged about 23 years, Occupation-Agriculturist, Resident of Melwatikra, Police Station Raigarh, District: Raigarh (C.G.)

Versus

RESPONDENT: State of Chhattisgarh, Through District Magistrate, District: Raigarh (C.G.)

Present:

Shri Awadh Tripathi, Advocate for the appellant.
Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT
(Delivered on 15-3-2007)

L.C. Bhadoo, J.

Heard on M.(Cr.)P. No.311/2007, application for condonation of delay in filing this appeal.

As per the office report, there is delay of 1734 days in filing this appeal. It has been mentioned in the application that as the accused was in custody, therefore, he called his mother, but she could not file the appeal.

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

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Considering the grounds taken in the application, facts of the case and the fact that the accused is sentenced to undergo imprisonment for life, we are of the considered opinion that it is a fit case in which delay in filing the appeal should be condoned. Accordingly, the application is allowed. Delay in filing the appeal is condoned.

Also heard on the question of admission.

The appeal is **admitted** for consideration.

With the consent of learned counsel for the parties, appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 5th May 1998 passed by the 2nd Additional Sessions Judge, Raigarh in S.T. No.179/97 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his father namely, Chaitram, sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that on 6-5-97 at about 9 p.m. in the night deceased Chaitram, father of the accused, came in drunken condition, after abusing the accused, he rushed towards him to beat him. The accused picked up a crowbar and attacked his father with crowbar, as a result of which Chaitram succumbed to the injuries. The matter was reported by Bhagwano, Kotwar under F.I.R. Ex.-P/7. Station House Officer, Police Station Raigarh after registering the case under Section 302 of the I.P.C.

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आदेश पत्रक (पूर्वानुबद्ध)

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left for scene of occurrence, after giving notice Ex.-P/5 & Ex-P/5-A to the Panchas, prepared inquest Ex.-P/6 on the body of the deceased. While in the police custody, the accused gave memorandum Ex.-P/1, in pursuance of that he got recovered crowbar, weapon of offence, under Ex.-P/2. Plain soil and blood stained soil was taken into possession from the place of occurrence under Ex.-P/3. The body of deceased Chaitram was sent for post-mortem examination to the K.G. Hospital, Raigarh under Ex.-P/10-A where Dr. Ashok Kumar Jain conducted post-mortem on the body of the deceased, prepared postmortem report Ex.-P/10 and opined that mode of death is shock. Death is homicidal in nature.

After completion of the investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Raigarh who in turn committed the case to the Sessions Judge Raigarh from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 9 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard learned counsel for the parties.

At the outset learned counsel for the accused/appellant has not disputed involvement of the accused in assaulting his father, as a result of which Chaitram succumbed to the injuries inflicted by the accused. His argument is that the deceased was father of the accused, he was in the habit of consuming liquor, after consuming liquor he used to beat the accused. On the fateful day, the deceased came in a drunken condition, started abusing the accused and rushed towards him to beat him, therefore, the accused picked up crowbar and attacked the deceased with said crowbar. As per postmortem report and medical evidence, all the injuries were in the nature of contusions. There was no fatal injury which can be said to be dangerous to the life. As per the doctor's evidence, the deceased died on account of shock. Therefore, there was no intention of the accused to cause death of his father, as such offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence available on record. As per the prosecution case, the accused made extra judicial confession after commission of crime before PW-1 Puniram, PW-2 Bhagwano, PW-4 Harimangal Rathiya and PW-5 Hansram. Perusal of their evidence shows that extra judicial confession made by the accused was voluntary and

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आदेश पत्रक (पूर्वानुबद्ध)

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true. Moreover, crowbar, weapon of offence, was recovered at the instance of the accused, as such we do not find any illegality or infirmity in the judgment of the trial Court to the extent that the accused was author of the crime in question.

As far as argument advanced by learned counsel for the appellant is concerned, argument of learned counsel for the appellant has force for the reason that case of the prosecution is that the deceased was in the habit of consuming liquor, thereafter used to abuse and beat the accused. On the fateful day, the deceased came in a drunken condition, rushed towards the accused to beat him, therefore, the accused attacked him with crowbar. PW-6 Dr. Ashok Kumar Jain, who conducted postmortem, has noticed following injuries:-

(1) Contusion over right cheek near eye above the level of zygomatic arch in the size of 2 cm x 1 cm,

(2) Bluish discolouration of right upper eyelid,

(3) Contusion on left side of neck in the size of 7 cm x 3 cm and 1 cm in width,

(4) Lobule of left ear was torn,

(5) Contusion on left side of face above the level of zygomatic arch in the size of 1.5 cm x 1 cm.

On opening skull there was clotted blood. Clotted blood was present in the brain. He has further stated that in his opinion cause of death was shock on account of sudden attack made on his head and also on account of heart failure. The doctor has not stated that injury was sufficient in the ordinary course of nature to

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आदेश पत्रक (पूर्वानुबद्ध)

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cause death. There was no fracture or damage to the vital organ of neck or head.

The background in which the accused attacked his father makes it clear that the accused had no intention to cause death of his father. However, from the manner in which the accused attacked his father with crowbar that too on neck and face, it can safely be inferred that the accused had knowledge that by attacking with crowbar he may likely to cause death of his father. Therefore, knowledge can be attributed to the accused. In view of the above facts, offence against the accused is made out under Section 304 Part-II of the I.P.C.. Hence conviction of the accused under Section 302 of the I.P.C. and sentence imposed upon him under that section cannot be sustained.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside. Instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 8 years. The accused/appellant is stated to be in detention since 7-5-97 thereby he has completed more than 9 years sentence, therefore, he has already served sentence imposed upon him. It is, therefore, directed that the accused/appellant be set at liberty forthwith, if not required in any other case.

Consequently, M.(Cr.)P. No.312/2007 stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Barve

P.T.O.

23.5.07